DATO' IDRIS JUSOH

v.

DATO' SERI TUAN GURU HJ ABDUL HADI AWANG & ORS

COURT OF APPEAL, PUTRAJAYA
HASHIM YUSOFF JCA
TENGKU BAHARUDIN SHAH JCA
LOW HOP BING J
[CIVIL APPEAL NO: T-02-94-04]
2 MARCH 2004

TORT: *Defamation - Interim injunction to restrain publication - Words complained of - Whether defamatory of plaintiff - Whether justified - Whether learned judge erred in dismissing application for injunction*

This was the appellant's appeal against the decision of the learned judge dismissing the appellant's application for an interim injunction against the respondents. The injunction was sought by the appellant to prevent the respondents from repeating, publishing or distributing words alleged to be defamatory of the appellant.

Held (allowing the appeal and granting the interim injunction)
Per Hashim Yusoff JCA delivering the judgment of the court:

[1] The sting of the alleged defamatory words were to the effect that the appellant had enriched himself by acquiring government contracts allegedly funded by "Wang Ehsan" and that he was a dishonest and corruptible person. However, there was no material before the court to show that the projects awarded to Jusoh Enterprise SB of which the appellant was a minority shareholder were funded by "Wang Ehsan". Further, the contracts were funded by the Federal Government. As such there was no nexus between the contracts and "Wang Ehsan". In fact one of the contracts was awarded before the issue of "Wang Ehsan" arose. Therefore, the alleged defamatory words were obviously untrue and the intended defence of justification was not likely to succeed at the trial. In light of this finding, it was unnecessary to dwell upon the issue of conspiracy to injure the appellant. Accordingly, the learned judge had erred in refusing to grant the interim injunction. (p 231 c-f)

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan terhadap keputusan yang arif hakim kerana menolak permohonan perayu untuk mendapatkan injunksi interim terhadap responden-responden. Injunksi tersebut dipohon oleh perayu bagi menghalang responden-responden dari mengulangi, menerbitkan atau menyebarkan perkataan-perkataan yang dikatakan telah memfitnah perayu.

Diputuskan (membenar rayuan dan mengeluarkan injunksi interim)
Oleh Hashim Yusoff HMR menyampaikan penghakiman mahkamah:

[1] Tikaman kata-kata yang dianggap memfitnah itu adalah bahawa perayu telah memperkayakan dirinya dengan cara memperoleh kontrak-kontrak kerajaan yang dimodali oleh "Wang Ehsan" dan bahawa beliau adalah seorang yang korup dan tidak jujur. Bagaimanapun tiada sebarang material di hadapan mahkamah yang menunjukkan bahawa projek-projek yang diberikan kepada Jusoh Enterprise SB di mana perayu adalah pemegang saham minoriti adalah dimodali oleh "Wang Ehsan". Lagipun, kontrak-kontrak telah dimodali oleh Kerajaan Persekutuan. Oleh itu tiada hubung kait di antara kontrak-kontrak dan "Wang Ehsan". Malah, salah satu dari kontrak-kontrak tersebut diberikan sebelum isu "Wang Ehsan" timbul. Oleh yang demikian, kata-kata yang dikatakan sebagai menghina itu adalah tidak benar dan pembelaan justifikasi di perbicaraan berkemungkinan tidak akan berjaya. Dengan dapatan ini, ianya tidak lagi perlu untuk menyentuh soal konspirasi untuk mengkhianati perayu. Yang arif hakim, dengan itu, telah silap apabila enggan membenarkan injunksi interim.

For the appellant/plaintiff - Alvin John (Ahmad Redza & KC Lu); M/s Shahrizat Rashid & Lee
For the respondents/defendants - Sulaiman Abdullah (Mohd Lutfi Awang & Khaled Abd Jalil); M/s Fariz Halim & Co

Reported by Usha Thiagarajah

JUDGMENT

Hashim Yusoff JCA:
This is the judgment of the court.

This is an application for interim injunction taken out by the appellant against the respondents to prevent the respondents from repeating, publishing or distributing words alleged to be defamatory of the appellant/plaintiff.

The defendants averred through the affidavit of the first respondent, denying having uttered the words published and in the same breadth the first respondent said he will rely on the defence of justification and fair comment during the trial.

The learned trial judge had allowed the interim injunction during the *ex parte* application, but disallowed it during the *inter parte* hearing.

We have carefully considered the grounds of judgment of the learned judge, the argument fully canvassed by learned counsel for both sides and also the materials before us and have found that:

1) the sting of the words used by the respondents are to the effect that the appellant had enriched himself by acquiring Government contracts allegedly funded by "Wang Ehsan" and that he is a dishonest and corruptible person.

2) However there is no material put forward before this court to show that the projects awarded to Jusoh Enterprise S.B. of which appellant is a minor shareholder, were funded by "Wang Ehsan".

Moreover, these contracts were awarded by the Federal Government. As such, there is no nexus between these contracts and the Wang Ehsan. In fact, one of the contracts was awarded on 17 July 1999 (refer m/s 135 AR) ie, even before the issue of "Wang Ehsan" could have arisen.

Therefore the words referred to are obviously untrue and therefore the intended defence of justification is not likely to succeed at the trial.

In the light of this finding, we feel it unnecessary to dwell upon the issue of conspiracy to injure the appellant.

That being so, we find that the learned High Court Judge had erred in refusing to grant the interim injunction.

We therefore allow this appeal with costs here and below and set aside the Order of refusal of the learned High Court Judge and hereby grant the interim injunction prayed for.

Deposit refunded to the appellant.

Our thanks to both counsel for their diligence and forceful arguments.